IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.2950 OF 1996
and
W.M.P.No.4711 of 1996

Mr.G.Krishnakumar ..Petitioner

-Vs-

1.The State of Tamil Nadu
rep.by Secretary
Municipal Administration
and Water Supply Department
Fort St. George
Madras 600 009

2.The Commissioner
Corporation of madras
Ripon Buildings
Madras 600 003 ..Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of Mandamus as stated therein.

For petitioner :Mr.P.Arivudainambi

For respondent No.1 : Ms.N.G.Kalaiselvi,
Spl.G.P.

For respondent No.2 : Mrs. P.Bagyalakshmi
for Corporation

:ORDER

Heard the learned counsel appearing for the parties.

2.This writ petition has been filed by the parent of one K.Ramya, a girl aged about 12 years who expired on 25.6.95 on account of the accident caused by the bullock cart belonging to respondent No.2 – Corporation, which has been driven by an employee of the Corporation for the purpose of scavenging.

3.A counter affidavit has been filed in this writ petition. Since some factual disputes had been raised, after hearing the counsel for both parties, D.Murugesan,J. had called upon the parties to furnish a list of persons to be appointed as Arbitrator. Subsequently, the learned counsel for the respondent had submitted the name of Sri.N.P.K. Menon, a Retired District Judge and practising Advocate in this Court. The aforesaid name was accepted by the learned Judge and Sri.N.P.K.Menon was appointed as Arbitrator to submit his report on the following questions:

1.Whether the petitioner is entitled to any compensation for the loss of life of his minor daughter due to the reckless driving on the part of the second respondent employee?

2.If so, to what amount of compensation the petitioner is entitled to ?

4.Thereafter, the Arbitrator held enquiry in presence of both parties. Evidence was adduced on behalf of the petitioners and the witnesses were examined and cross-examined. Some documents were marked. Upon consideration of the materials available on record, the Arbitrator has found that the accident occurred due to negligence of the bullock cart driver. The Arbitrator has suggested a sum of Rs.4,10,000/- should be paid as compensation by calculating Rs.24,000/- as annual loss and by applying the multiplier of 15. This conclusion was reached by the Arbitrator by placing reliance upon the decision of the Supreme Court reported in 2001 AIR S.C.W 3430 (M.S.GREWAL AND ANOTHER V. DEEP CHAND SOOD AND OTHERS).

5.In the objection to the findings of the Arbitrator, the main point relates to the question of contributory negligence on the part of the deceased. The Corporation has also challenged the quantum.

6.It is to be noticed that the earlier order of the learned Judge appointing an Arbitrator had not been challenged by either party and in fact, both parties have participated in the enquiry conducted by the Arbitrator.

7.At the time of hearing of the matter, learned counsel for the Corporation has placed reliance upon the decision reported in 1997 (9) SCC page 552 (RAJKOT MUNICIPAL CORPORATION V. MANJULBEN JAYANTILAL NAKUM AND OTHERS). That decision relates to the death of a pedestrian on account of the falling of branch of an old tree which had been planted and was supposed to be maintained by the Rajkot Municipal Corporation. In the peculiar facts of that case, it was held that there was no negligence and the Corporation was not liable to pay any compensation. I think the said decision is not at all applicable to the facts of the present case where a girl child who was riding a cycle has been run over by the bullock cart which was coming from behind.

8.The learned counsel for the respondent No.2 also submitted that there was no intention on the part of the bullock cart driver to cause the accident and therefore no compensation is payable. This submission is equally fallacious. Negligence is failure to take care as required of a man of ordinary prudence. If the bullock cart coming from behind had dashed against

the cycle which was going in front of it, the only conclusion which can be arrived at is that the accident occurred on account of negligence on the part of the bullock cart driver. No other conclusion is possible in such a scenario.

9.In the counter affidavit as well as in the objection to the report of the Arbitrator, a plea has been raised regarding the contributory negligence on the part of the deceased. It has been submitted that the parents should not have allowed the girl child aged 12 years to ride a cycle on the road and thereby invite the accident. This submission is not only insensitive but also fallacious. It cannot be said that no child below 12 years should be allowed to ride a cycle on the road. Merely because a child rides a cycle on the road, it does not give a license to the other users of the road to drive any motor vehicle or the bullock cart negligently and run over such child. It is, of course, true that the child while riding a cycle is required to be careful. Whether the child in this particular case was careless or not has to be judged on the basis of materials on record. The Arbitrator has referred to the evidence of P.W.2- an eye-witness to the occurrence who has stated that while the child was riding the cycle, the bullock cart came from behind and dashed against the cyclist and subsequently, the left wheel of the bullock cart ran over the child. No evidence to the contrary is adduced on behalf of the Corporation. Even the bullock cart driver has not been examined by the Corporation to explain the circumstances under which the accident occurred. The evidence has been accepted by the Arbitrator and I see no reason to discard such evidence or the finding that the accident occurred only due to negligence of the bullock cart driver who came from behind and dashed against the cyclist who was going in front of it. In such a situation, there is negligence on the part of the driver only and no contributory negligence can be attributed to the deceased.

10.The learned counsel for the respondent No.2 further submitted that the quantum of compensation arrived at by the Arbitrator is excessive and there was no justification to fix the annual contribution at Rs.24,000/- and further there was no justification to apply the multiplier of 15. As already indicated, the Arbitrator has relied upon the decision of the Supreme Court reported in 2001 AIR SCW 3430. After going through the aforesaid decision, I find no reason to take a different stand. By no stretch of imagination, it can be said that fixation of Rs.4,10,000/- is excessively high to warrant interference by this Court.

11.It is of course true that in the writ petition itself, the petitioner had claimed for compensation of Rs.4,00,000/-. In the course of hearing, I had suggested to the learned counsel appearing for the respondents to ascertain as to whether the Corporation is willing to pay a sum of Rs.3,50,000/-. This suggestion was given to ensure prompt payment and avoid further legal wranglings. The learned counsel for the Corporation has expressed the inability of the Corporation to make any such payment. On the other hand, after the matter was adjourned for the aforesaid purpose, objection to the report of the Arbitrator has been filed. Even though the quantum suggested by the Arbitrator appears to be just, there is no justification to direct payment of any lesser amount, the learned counsel for

the petitioner has fairly submitted that the petitioner is still willing to accept Rs.3,50,0 00/- to bring about an early end to the matter.

12.Keeping in view the fair submission of the learned counsel for the petitioner, I direct that even though a sum of Rs. 4,10,000/- is payable by the Corporation, the petitioner would accept a sum of Rs. 3,50,000/-(Rupees Three Lakhs and Fifty Thousand only) provided such amount is paid to the petitioner within a period of two months from the date of communication of this order. However, if the said amount is not paid within two months, the entire sum of Rs.4,10,000/- will be payable with interest at the rate of 9% per annum thereafter.

13.The Arbitrator in his memo has indicated that 13 sittings have taken place and has prayed for payment of Rs.20,000/-(Rupees Twenty Thousand only) as remuneration. This appears to be reasonable. It is directed that this amount of Rs. 20,000/-may be paid by the petitioner and the respondents in equal proportion within a period of two months.

14.The writ petition is ordered accordingly. There will be no order as to costs. Consequently, W.M.P.No.4711/1996 is also disposed of.

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To

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